

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-680

December 3, 2002

NORTHERN UTILITIES, INC. – MAINE
Request for Approval

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve Northern Utilities, Inc.'s (Northern or NUI) request to terminate its Fuel Purchase Agreement with BayNor Energy, Inc.¹ (BayNor) and any associated agreements. We determine that no further Commission action is required for Northern to utilize an internal fuel-financing vehicle or for Northern to have the opportunity to collect financing charges associated with its stored gas inventory through its Cost of Gas Factor.

II. PROCEDURAL HISTORY

On November 4, 2002, Northern filed a petition for approval of a fuel-financing vehicle with the Commission. It stated that it made this filing pursuant to 35-A M.R.S.A. §§ 103, 104, and 301. NUI also indicated that in order to meet the termination requirements of its agreement with BayNor, it needs Commission action by December 12, 2002. On November 6, 2002, the Advisory Staff contacted NUI to obtain clarification of its request to allow the Commission to properly docket this case. Northern directed Staff to a provision in the Stipulation and Agreement in Docket No. 82-100 that requires Commission approval of any material amendments of the BayNor fuel inventory financing plan or related agreements between or among BayNor, Northern and any banks.

¹BayNor Energy, Inc. is an unaffiliated entity formed specifically to provide fuel financing to Bay State Gas Company and Northern. See *Northern Utilities, Inc., Re: Request for Approval of a Gas Purchase Plan with BayNor*, Docket No. 82-100, Decision and Order (Dec. 9, 1982). Under the BayNor agreement, Northern transfers rights to receive title to its inventory to BayNor, and BayNor raises the funds necessary to purchase the fuel inventory by issuance of its own commercial paper. Union Bank of California currently provides BayNor with a \$37 million irrevocable letter of credit in support of the issuance of BayNor's commercial paper.

III. BACKGROUND

A. Northern's Current Financing Methods

Northern currently finances its stored gas inventory through an arrangement with BayNor. The Commission approved a Stipulation and Agreement between the parties implementing the financing arrangement by Order dated December 9, 1982, in Docket No. 82-100. In addition, by Order dated December 15, 1998, in Docket No. 98-845, *Northern Utilities Inc, Re: Application of Approval of Amendments to Revolving Credit Agreement and Letter of Credit Agreement*, the Commission approved an increase in the amount of gas inventory that could be financed under the BayNor arrangement from \$3,000,000 to \$10,000,000. At the time of each of the previous Commission Orders, the arrangement with BayNor was considered a reasonably priced financing option for the Company.

Recently, the Commission approved Northern's participation in a corporate-wide "Money Pool" agreement administered by NiSource Inc. See *Northern Utilities, Inc., Petition for Approval to Participate in Funds Pooling Arrangement*, Docket No. 2001-646, Order (Dec. 21, 2001) and Supplemental Order (May 13, 2002). The Commission's Orders did not place limitations on the use of funds borrowed from the Money Pool; however, it was understood that these funds were intended to fund typical short-term cash requirements (i.e. receivables, inventory, interim construction funding).

B. Northern's Proposal

Northern now proposes to use the Money Pool to finance gas inventory purchases and to terminate the BayNor agreement to take advantage of the lower financing costs available through the Money Pool. In his prefiled testimony, Mr. Vincent Rea, Director of Treasury & Corporate Finance at NiSource Corporate Services, Inc. (NCSC), states that the current BayNor Arrangement is due to expire on December 24, 2002, and that the Union Bank of California (the Bank) has informed the Company that the fees associated with the Letter of Credit, which supports BayNor's ability to purchase natural gas by supporting its commercial paper program, would increase significantly if the parties wished to renew the Letter of Credit and continue the present arrangement.² Mr. Rea's testimony also states that Northern surveyed other potential Letter of Credit providers and determined that the increase in Letter of Credit fees quoted by Union Bank appears to be consistent with current market prices.

²While clarifying NUI's request, Staff also determined that it was the Letter of Credit between the Bank and BayNor that was expiring. The Fuel Financing arrangement, however, depends on the Letter of Credit and, by default, also expires on that date. Mr. Rea noted in his testimony that the increase in cost quoted by the Bank was on the order of 90 to 100 basis points annually.

When NUI compared the cost of continuing the BayNor arrangement under the proposed rate and fee structure to the cost available through its Money Pool agreement, it determined that the Money Pool was more economical. Mr. Rea provided two separate analyses with his testimony and under each scenario, the total financing costs were lower using the Money Pool. NUI therefore proposes terminating the BayNor arrangement and financing its fuel through the Money Pool.

NUI proposes to continue recovering fuel financing costs through the Cost of Gas Factor, consistent with its Tariff, Section 5 – Cost of Gas Factor and 35-A M.R.S.A. §4703. Northern also proposes to calculate its monthly gas inventory financing costs by applying the Company's short-term debt rate to the average month's inventory balance. Northern will defer all calculated monthly financing charges incurred in the off-peak period (May through October) to the peak period. The deferral of fuel inventory financing costs will be carried through the off-peak period with interest calculated monthly pursuant to the provisions of the CGF, as is the case with other deferred gas costs. Rea Test. at 8, Ins 20 – 24.

IV. ANALYSIS AND RECOMMENDATION

We must answer three questions raised by Northern's proposal. First, is Northern's proposal to terminate its arrangement with BayNor reasonable? Second, may Northern utilize the Money Pool to finance its fuel inventory as currently approved or would it require additional authorization for this use? Third, does the change in how Northern finances its fuel inventory require our approval to ensure that associated fuel financing costs flow through the CGF?

A. Termination of BayNor Arrangement

Paragraph 10 of Stipulation and Agreement approved in Docket No. 82-100 states:

It is agreed that material amendments or other endorsements to any of the proposed agreements shall be approved by the Commission before they become effective.

The Stipulation and Agreement states that agreements in this transaction include the proposed Fuel Agreement, Credit Agreement, Dealer Agreement, Depository Agreement, Participation Agreement and the Security and Assignment Agreement, as well as "any other documents related to this fuel inventory financing plan between BayNor, Northern, and any banks." Stipulation and Agreement, para. 8-9. Because termination of the BayNor arrangement constitutes a material amendment to the existing series of agreements, we conclude that, under the terms of our prior order, Northern does need approval from the Commission.

Northern has indicated that its use of the Money Pool is more economical for ratepayers than the BayNor arrangement. In this instance, it appears from Northern's

analysis that financing its fuel inventory through the Money Pool is reasonable. However, while we have reviewed the Company's analysis and find it to be reasonable on its face, we do not have access to banking industry data that would allow us to verify the magnitude of the general increase in the structure of rates and fees on Letters of Credit. Thus, we are to some degree relying on the Company's due diligence in this matter. We are, therefore, not making any decision as to the recoverability in rates of specific financing costs at this time.

On the basis of its analysis, we will authorize Northern to terminate all agreements it has entered under the BayNor arrangement.

B. Use of Money Pool as Financing Tool

As previously noted, when the Commission approved Northern's participation in the Money Pool, it did not limit the use of those funds in any way that would preclude NUI from using them for these purposes. Northern has further stated that the internal borrowing limit set by NiSource for NUI as a Money Pool participant is sufficient to cover both its fuel financing and other working capital requirements. Since no modifications are being made to the previously approved Money Pool arrangement, the Commission need not take any further action to allow Northern to finance its fuel inventory through this agreement. We direct NUI to separate the gas-related borrowing balances and interest charges from other balances and interest charges when it provides the annual Money Pool report required in our approval of the Money Pool in Docket No. 2001-646.³

C. Cost of Gas Factor Recovery

The Stipulation in Docket No. 82-100 allowed Northern to include the financing costs of its stored gas inventory in its cost of gas adjustment (now called by Northern its Cost of Gas Factor (CGF)). It did not specify that the only acceptable financing arrangement was the BayNor arrangement. Gas inventory financing costs, if prudently incurred, are allowed for inclusion in the cost of gas adjustment. See Chapter 420, "Cost of Gas Adjustment for Gas Utilities" at 1(D). Nothing in Northern's current proposal requires a waiver of our rules or Northern's CGF tariff. Therefore, no additional Commission approval is necessary for recovery of fuel inventory financing costs arising from a financing arrangement other than with BayNor, except that -- as with any cost that is recoverable through the CGF -- Northern is subject to a showing that the cost incurred is reasonable and prudent. We recommend that Northern retain the appropriate documentation supporting its financing methods.

³ We note that on page 3 of our December 21, 2001 Order in Docket No. 2001-646 we spelled out the reporting requirements and mentioned that they would apply to the "calendar year" but failed to set a due date for the report. To the extent that it is unclear, we require that calendar year be defined as January 1 to December 31 and that the due date for this annual report be January 31 each year, or one month following year-end.

Also, Northern's proposed method of calculating the amount of the fuel-financing fee appears reasonable. However, we will reserve the right to verify the calculation in future proceedings.

V. CONCLUSION

As required by the Docket No. 82-100 Stipulation, we will allow Northern to terminate its BayNor Fuel Financing Arrangement as well as the other applicable and related contracts. We have determined that no other approvals are necessary for Northern to proceed with its proposed alternative fuel financing arrangement involving the Money Pool or its proposal to recover non-BayNor fuel financing costs in the CGF, subject to our finding in each CGF adjustment that those costs are reasonable and prudent.

Dated at Augusta, Maine, this 3rd day of December, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond

COMMISSIONER ABSENT: Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.